

A Kesultanan Pahang v Sathask Realty Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO C-01-6-1995

MAHADEV SHANKAR, ABDUL MALEK AHMAD AND MOKHTAR SIDIN JJCA

B 20 FEBRUARY, 2 APRIL AND 7 APRIL 1997

Civil Procedure — Jurisdiction — High Court — Judicial review — Dispute regulated by s 7(1) of the Sultanate Lands Enactment 1919 of Pahang — Whether the High Court had jurisdiction to interfere with the decision of a tribunal which is conferred exclusive jurisdiction by a statute

C *Statutory Interpretation — Construction of statute — Definition of ‘subject’ — Whether ‘subject’ includes a body corporate — Reading the statute as a whole — Whether there can be different meanings of the word ‘subject’ in a same section — General principles of statutory interpretation*

D *Words and Phrases — ‘Subject’ — Sultanate Land Enactment 1919 (Pahang) s 6(i)*

E The respondent was a limited company incorporated under the Companies Act 1965. On 28 May 1973, the Sultan of Pahang leased out to the respondent a piece of land for a term of 50 years (which was subsequently extended to 99 years) with effect from 1 July 1964. The Sultan leased the land to the respondent (a corporation) by writing under his hand as Ruler of the State and that of the Menteri Besar who gave his consent by signing the lease instrument. On 14 May 1985, the appellant instituted a claim before a tribunal set up pursuant to s 7 of the Pahang Sultanate Land Enactment 1919 (‘the Enactment’) claiming, inter alia, that the lease to the respondent was invalid on the ground that the respondent was not a natural person nor a subject of the ruler of the state by virtue of ss 4 and 6 of the Enactment. The tribunal decided in favour of the appellant but its decision was subsequently quashed by the High Court on an application by the respondent for an order of certiorari. The appellant appealed.

G There were two issues before the court. The first issue was whether the ouster clause found in s 7(1) of the Enactment ousted the court’s jurisdiction to hear or adjudicate upon any claim to the Sultanate lands or any portion thereof or interest therein, which claim should instead be heard and determined by a tribunal appointed by the Ruler of the State in Council. Learned counsel for the appellant contended that only when the tribunal acted outside its jurisdiction could the High Court interfere based on an error of law that went to jurisdiction and thus the decision of the Court of Appeal in *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers’ Union* [1995] 2 MLJ 317 to the contrary ought to be rejected.

I The second issue was whether the Enactment applied only to natural persons or to corporate bodies as well. Learned counsel for the appellant had referred to s 2 of the Enactment, which he said,

indicated that the person must be a natural person. He supported his contention by referring to ss 5 and 6 of the Enactment and maintained that by reading the sections as a whole, the word 'subject' could never mean a body corporate but could only refer to a natural person. The appellant also argued that the Enactment did not envisage a limited company for its purpose.

Held, dismissing the appeal:

- (1) (Per **Mahadev Shankar JCA**) The Enactment clearly recognized that the Ruler had power to lease Sultanate lands both to his Malay subjects and to others. Sections 5 and 6 of the Enactment must be construed together. By s 6(i)(a), the power of the Ruler of the State to lease Sultanate lands to his Malay subjects was unconditional and absolute. Where the person was not a Malay subject of the Ruler, the concurrence of both the Ruler and the Menteri Besar was required either by way of lease or other written authority. In this case, these formal requirements were scrupulously observed by the Sultan of Pahang and the Menteri Besar not once but twice with regard to the respondent's lease — first when the lease was originally granted, and secondly when the lease for 99 years was substituted for it on 29 May 1973 (see pp 707I and 708A–C).
- (2) (Per **Mokhtar Sidin JCA**) When the Enactment was enacted, the legislature would have been aware of the General Clauses Enactment 1896 which was applicable to the Enactment and would definitely have known that the word 'person' would include a company or association or a body of individuals whether incorporated or not. Therefore, the argument by the appellant that the Enactment did not envisage a limited company for its purpose failed.

Moreover, the natural meaning of s 6(i) of the Enactment envisaged that the Ruler could lease or sell the Sultanate lands to two categories of people. The first was under s 6(i)(a) whereby the Ruler by his writing without the consent of the Menteri Besar could lease or sell any of the lands to the Malay subjects of his. Under s 6(i)(b), the Ruler of the State by writing could lease his land to any other person (including a corporation) not being a Malay subject of his but with the consent of the Menteri Besar. To read it otherwise would not give the required effect to that section. Thus, the Sultan had done exactly what s 6(i)(b) required him to do in that he leased the land to the respondent (a corporation) by writing under his hand as Ruler of the State and that of the Menteri Besar who gave his consent by signing the lease instrument (see pp 721I and 722A, D–F).

- (3) (Per **Abdul Malek Ahmad JCA**) All the relevant authorities on the issue of jurisdiction of both the superior courts in England and in this country in the face of an ouster clause were considered and analysed in the Court of Appeal case of *Sykt*

- A *Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 in great detail and the position had been correctly stated therein. In any case, the court was bound by their own decision. The question of jurisdiction, therefore, fell (see p 712C-I); *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317, *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789 followed and *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Ors* [1980] 2 MLJ 165; [1981] AC 363 not followed.
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- C (4) (Per **Abdul Malek Ahmad JCA**, dissenting) In interpreting any statute, one had to read the Enactment as a whole and not any particular section by itself. Section 5 of the Enactment began with 'No person not being a Malay subject ...'. By reading the Enactment as a whole and in its proper context, 'Malay subject' must mean a natural person and the words 'no person' must also refer to a Malay subject in view of s 2 of the Enactment. To say that 'person' in the Enactment included a body corporate would certainly be repugnant or contrary to what the statute intended and therefore, the word 'person' and 'subject' in the Enactment could and must only mean a natural person (see pp 715H and 716F).
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[Bahasa Malaysia summary]

- F Penentang merupakan sebuah syarikat berhad yang ditubuhkan di bawah Akta Syarikat 1965. Pada 28 Mei 1973, Sultan Pahang memajakkan sebidang tanah kepada penentang untuk jangka masa 50 tahun (yang kemudiannya dilanjutkan kepada 99 tahun) mulai daripada 1 Julai 1964. Sultan memajakkan tanah tersebut kepada penentang (sebuah pertubuhan) secara bertulis di bawah kuasanya sebagai Pemerintah Negeri dan Menteri Besar yang memberikan kebenaran dengan menandatangani instrumen pajakan. Pada 14 Mei 1985, perayu membawa suatu tuntutan di hadapan sebuah tribunal yang ditubuhkan menurut s 7 Enakmen Tanah Kesultanan Pahang 1919 ('Enakmen tersebut') dengan menuntut, antara lain, bahawa pajakan kepada penentang adalah tak sah atas alasan bahawa penentang bukanlah orang sebenar atau pun seorang rakyat pemerintah negeri disebabkan ss 4 dan 6 Enakmen tersebut. Tribunal itu telah memutuskan memihak kepada perayu tetapi keputusannya kemudiannya dibatalkan oleh Mahkamah Tinggi atas satu permohonan oleh penentang untuk satu perintah certiorari. Perayu membuat rayuan.
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- I Terdapat dua isu di hadapan mahkamah. Isu yang pertama adalah sama ada fasal pengusiran yang didapati dalam s 7(1) Enakmen tersebut mengusirkan bidang kuasa mahkamah untuk mendengar atau menghukum atas mana-mana tuntutan kepada tanah Kesultanan atau mana-mana bahagian atau kepentingan di dalamnya, yang mana tuntutan itu sebaliknya patut didengar dan ditentukan oleh sebuah

tribunal yang dilantik oleh Pemerintah Negeri dalam Majlis. Peguam perayu yang arif berhujah bahawa hanya apabila tribunal bertindak di luar bidang kuasanya barulah Mahkamah Tinggi boleh campur tangan berdasarkan satu kesilapan undang-undang yang melibatkan bidang kuasa dan maka keputusan Mahkamah Rayuan dalam *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 yang bertentangan patut ditolak.

Isu adalah sama ada Enakmen tersebut terpakai kepada orang sebenar sahaja atau juga kepada badan korporat. Peguam perayu telah merujuk kepada s 2 Enakmen tersebut, yang beliau katakan menunjukkan bahawa orang berkenaan mestilah merupakan orang sebenar. Beliau menyokong hujahnya dengan merujuk kepada ss 5 dan 6 Enakmen tersebut dan menegaskan bahawa dengan membaca seksyen-seksyen secara keseluruhan, perkataan 'rakyat' tidak boleh bermakna sebuah pertubuhan tetapi hanya boleh merujuk kepada orang sebenar. Perayu juga menghujahkan bahawa Enakmen tersebut tidak membayangkan sebuah syarikat berhad untuk tujuannya.

Diputuskan, menolak rayuan:

- (1) (Oleh **Mahadev Shankar HMR**) Enakmen tersebut dengan jelasnya mengenal pasti bahawa Pemerintah berkuasa untuk memajak tanah Kesultanan kepada kedua-dua rakyat Melayu dan orang lain. Seksyen-seksyen 5 dan 6 Enakmen tersebut mesti ditafsirkan bersama. Melalui s 6(i)(a), kuasa Pemerintah Negeri untuk memajak tanah Kesultanan kepada rakyat Melayu adalah tanpa syarat dan mutlak. Di mana orang berkenaan bukanlah rakyat Melayu Pemerintah, persetujuan kedua-dua Pemerintah dan Menteri Besar dikehendaki sama ada melalui pajakan atau kuasa bertulis lain. Dalam kes ini, keperluan rasmi ini telah dipatuhi secara teliti oleh Sultan Pahang dan Menteri Besar bukan sekali sahaja malah dua kali berkenaan dengan pajakan penentang — pertama apabila pajakan diberikan pada asalnya, dan kedua apabila pajakan untuk 99 tahun diganti untuknya pada 29 Mei 1973 (lihat ms 707I dan 708A-C).
- (2) (Oleh **Mokhtar Sidin HMR**) Apabila Enakmen tersebut digubalkan, badan perundangan tentunya sedar akan Enakmen Fasal Am 1896 yang terpakai kepada Enakmen tersebut dan sudah tentunya tahu perkataan 'orang' akan termasuk sebuah syarikat atau persatuan atau badan individu sama ada ditubuhkan atau tidak. Oleh itu, hujah oleh perayu bahawa Enakmen tersebut tidak membayangkan sebuah syarikat berhad untuk tujuannya gagal.

Tambahan pula, makna biasa s 6(i) Enakmen tersebut membayangkan bahawa Pemerintah boleh memajak atau menjual tanah Kesultanan kepada dua kategori orang. Yang pertama adalah di bawah s 6(i)(a) di mana Pemerintah secara bertulis tanpa kebenaran Menteri Besar boleh memajak atau menjual mana-mana tanah kepada rakyat Melayu. Di bawah

- A s 6(i)(b), Pemerintah Negeri boleh memajak tanah secara bertulis kepada sesiapa yang lain (termasuk sebuah pertubuhan) yang bukan merupakan rakyat Melayu tetapi dengan kebenaran Menteri Besar. Untuk membaca sebaliknya tidak akan memberi kesan yang dikehendaki kepada seksyen tersebut. Justeru itu,
- B Sultan telah melakukan apa yang dikehendaki oleh s 6(i)(b) dalam ertikata dia memajak tanah kepada penentang (sebuah pertubuhan) secara bertulis di bawah kuasanya sebagai Pemerintah Negeri dan Menteri Besar yang memberikannya kebenaran dengan menandatangani instrumen itu (lihat ms 721I dan 722A, D-F).
- C (3) (Oleh **Abdul Malek Ahmad HMR**) Kesemua autoriti yang relevan tentang isu bidang kuasa kedua-dua mahkamah atas di England dan di negara ini berkenaan dengan fasal pengusiran telah dipertimbangkan dan dianalisisakan dalam kes Mahkamah Rayuan *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 secara terperinci dan kedudukan telah dinyatakan dengan betul di dalamnya. Walau bagaimanapun, mahkamah adalah diikat oleh keputusan sendiri. Oleh yang demikian, persoalan bidang kuasa adalah tidak kukuh (lihat ms 712C-I); *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317, *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789 diikuti dan *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Ors* [1980] 2 MLJ 165; [1981] AC 363 tidak diikuti.
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- F (4) (Oleh **Abdul Malek Ahmad HMR**, menentang) Dalam mentafsirkan mana-mana statut, seseorang haruslah membaca Enakmen tersebut secara keseluruhan dan bukan mana-mana seksyen tertentu dengan sendirinya. Seksyen 5 Enakmen tersebut bermula dengan 'tiada orang yang bukan rakyat Melayu ...'. Dengan membaca Enakmen tersebut secara keseluruhan dan dalam konteks yang betul, 'rakyat Melayu' mestilah bermakna orang sebenar dan perkataan 'tiada orang' mestilah juga merujuk kepada seorang rakyat Melayu memandangkan s 2 Enakmen tersebut. Untuk mengatakan bahawa 'orang' dalam Enakmen tersebut termasuk sebuah badan korporat memangnya bertentangan dengan apa yang dihasratkan oleh statut dan dengan itu, perkataan 'orang' dan 'rakyat' dalam Enakmen tersebut boleh dan mestilah hanya bermakna orang sebenar (lihat ms 715H dan 716F).]
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Notes

- I For cases on the jurisdiction of the High Court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2151-2173.
- For cases on construction of statutes, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1454-1578.

Cases referred to

- Dodwell & Co Ltd's Trust Deed, Re* [1978] 3 All ER 738 (refd)
Duff Development Co Ltd v Government of Kelantan & Anor [1924] AC 797 (refd)
Henry v De Cruz [1949] MLJ 25 (refd)
Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh [1997] 1 MLJ 789 (folld)
South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Ors [1980] 2 MLJ 165; [1981] AC 363 (not folld)
Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317 (folld)

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B

C

Legislation referred to

- Companies Enactment 1917 (Enactment No 20 of 1917)
 Companies Enactment 1897 (Pahang Enactment No 19 of 1897)
 Federal Constitution art 181(1)
 Industrial Relations Act 1967 ss 29(3)(a), 33, 33B(1)
 Interpretation Acts 1948 and 1967 s 66, Pt II
 Interpretation and General Clauses Ordinance 1948 s 2(61)
 General Clauses Enactment No 1 of 1896 (Pahang) ss 2
 Rules of the Court of Appeal 1994 r 18(2)
 Rules of the High Court 1980 O 53 r 1(2), O 57
 Sultanate Lands Enactment 1919 (Pahang Enactment No 1 of 1919) ss 2(a), 2(b), 5, 6, 6(i)(a), 6(i)(b), 6(iii), 7(1)
 Law of Property Act 1925 s 164(1) [UK]

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Appeal from: Originating Motion No 25–6 of 1992 (High Court, Kuantan)

F

Bastian P Vendargon (Gf Goldie with him) (Balendran Chong Bodi & Noorhuda) for the appellant.

Chin Yew Meng (Allen & Gledhill) for the respondent.

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2 April 1997

Mahadev Shankar JCA: Only two submissions were made before us by the appellant. The first was that this court could not reverse the decisions of the Privy Council and therefore *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturers Employees Union & Ors* [1980] 2 MLJ 165 was still binding on us and *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 should be ignored as being ultra vires.

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My learned brother Abdul Malek Ahmad JCA has dealt with this aspect of the matter in some depth and I do not need to say anymore about it except that there are exceptions even to the rule that the Court of Appeal is bound to follow its own decisions: see *Hendry v De Cruz* [1949] MLJ Supp 25 at p 27.

I

- A The second submission poses the question whether the Ruler of the State of Pahang had the power to lease Sultanate lands to 'a body of persons corporate' or a limited company like Sathask Realty Sdn Bhd ('Sathask').

Section 2 of the Pahang General Clauses Enactment No 1 of 1897 reads:

- B In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context —

- C (xviii) 'Person' shall include any company or association or body of individuals whether incorporated or not.

Pahang already had a Companies Enactment in 1897 — see Pahang Enactment No 19 of 1897. This was subsequently consolidated and amended by the Companies Enactment 1917 (Enactment No 20 of 1917) (see the Laws of the Federated Malay States (Vol III) by AB Voules p 160).

- D So by the time the Sultanate Lands Enactment (Pahang Enactment No 1 of 1919) ('the Enactment') came into force on 6 June 1919, the concept of corporate personality was well entrenched into the laws of Pahang.

- E Originally, leases under s 6 of the Enactment were restricted to a term not exceeding 50 years. From 28 December 1972, this period was extended to 99 years by Pahang Enactment No 9 of 1972.

The lease to Sathask, first granted on 1 July 1964, was for a period of 50 years. After the Enactment was amended in 1972, a new lease was substituted for the existing lease for a period of 99 years.

- F The Tribunal Khas constituted under s 7 of the Enactment ('the tribunal') took the view that the entities to whom Sultanate lands could be leased had to be persons of flesh and blood. In supporting this conclusion, the appellant's counsel referred us to *Re Dodwell & Co Ltd's Trust Deed* [1978] 3 All ER 738 ('*Dodwell*'), and 4 and 8 *Halsbury's Laws of England* (4th Ed) para 903, and paras 837–865 respectively. With respect, both these authorities were in fact against him.

- G In *Dodwell*, the issue was whether the word 'person' in s 164(1) of the Law of Property Act 1925 which restricts accumulations of income could apply to a company. Walton J held it could not because the original statute which the 1925 Act consolidated, 'was by its phraseology and expression intended to be confined to natural persons'. It is manifestly apparent that the Accumulations Act 1800, and the New South Wales Conveyancing Act 1919 dealt with persons equated with life and death. At the risk of some distortion, I would emphasize that the object of this legislation was to restrict the accumulation of income beyond a specified number of years from the death of the settlor.

The Enactment clearly recognized that the Ruler had power to lease Sultanate lands both to his Malay subjects and to others.

Sections 5 and 6 of the Enactment must of course be construed together. By s 6(i)(a), the power of the Ruler of the State to lease Sultanate lands to his Malay subjects was unconditional and absolute. The restrictions only came into play if the lease was to be to a *person* who was not a Malay subject of the Ruler. A

In such a situation, the concurrence of both the Ruler and the Menteri Besar was required either by way of lease or other written authority. B The interposition of the Menteri Besar must have been to ensure that the proposed transaction was in the best interests of both the Ruler and the State.

These formal requirements were scrupulously observed by His Royal Highness the late Sultan of Pahang and the Menteri Besar not once but twice in the case of the Sathask lease — first when the lease was originally granted, and secondly when the lease for 99 years was substituted for it on 29 May 1973. C

The need to rely on companies for the commercial development of land is sufficiently notorious to be taken judicial notice of (*Duff Development Co Ltd v Government of Kelantan & Anor* [1924] AC 797 is one instance). D If the Ruler of the State thought that some Sultanate land was ripe for commercial development, I fail to see why it should be held that the Ruler should not go ahead provided the required legal formalities are observed.

I am very much mindful of art 181(1) of the Federal Constitution by which, 'subject to the provisions of this Constitution, ... the powers ... of the Rulers ... as hitherto had and enjoyed shall remain unaffected'. I am unable to accede to the decision of the tribunal which will effectively remove the power of the Ruler to lease Sultanate lands to a limited company. E

Another aspect of the proper construction of the Enactment is the extension of the permitted period to 99 years. I agree with respondent's counsel that the effective life of a human being rarely stretches that far, and if a single lessee is envisaged in this situation, a corporation is a much better candidate. I am unable to subscribe to the view that Sultanate lands should only be used for residential occupants. In law, a limited company like Sathask is also a 'person'. F G

The passages from *Halsbury's* were quoted to support the contention that the word 'subject' of necessity implied living persons only. With the greatest respect, this cannot be right. There are numerous authorities which have decided that the legal personality of a company has a nationality (see *Pennington's Company Law* (6th Ed) pp 46–48). Where required, the court will regard the company as an association of persons. Indeed, the world we live in is now pervaded by multi-national companies (see *Modern Company Law* (6th Ed) by LCB Gower p 61). These entities by law have rights and liabilities with regard to landed property which are co-extensive with that of individuals. H I

The approach I have adopted to the interpretation of the Enactment is a purposive one, and its avowed purpose was to empower the Ruler to permit the occupation and development of Sultanate lands by Malay subjects and 'other than Malay subjects'.

- A** The issue of the sub-leases was not ventilated before us. According to the respondent's counsel, it was not taken in the court below. So I do not need to deal with it. As far as the justice of the case goes, the unchallenged occupancy of the subject land for over 25 years by Sathask and the buildings they have erected thereon constitute an estoppel against the appellant, but in the circumstances of this case, I do not need to elaborate on this aspect either.

I therefore reiterate that this appeal be dismissed with costs.

20 February 1997

- C Abdul Malek Ahmad JCA:** We heard this appeal on 2 December 1996 and had, by a majority decision, dismissed it with costs. However, it is my considered view that it should be allowed with costs here and in the court below and the deposit refunded to the appellant.

- D** The only issues that arise here relate to the question of jurisdiction and to the principles of statutory interpretation. It is my finding that the appellant cannot succeed on the issue of jurisdiction but hold that they have a good case on whether the Sultanate Lands Enactment 1919 (Cap 221) of Pahang ('the Enactment') apply only to natural persons or to corporate bodies as well. The second issue is actually the only issue both in the court below and before us but, for the purpose of clarity, I shall take some time to deal with the first issue as well.

E On the first issue, the ouster clause is found in s 7(1) of the Enactment and reads:

- F** No Court shall have jurisdiction to hear or adjudicate upon any claim to the Sultanate lands or any portion thereof or interest therein, but every such claim may be heard and determined by the Menteri Besar with the aid of two members of the Legislative Assembly appointed by the Ruler of the State in Council to sit with the Menteri Besar as assessors and assist in the determination of such claim. The Menteri Besar shall not in determining such claim be bound to conform to the opinions of the assessors.
- G** Every determination of a claim by the Menteri Besar under this section shall be final to all intents and purposes and there shall be no appeal therefrom.

The statement filed by the respondent pursuant to O 53 r 1(2) of the Rules of the High Court 1980 on 23 January 1992 for the orders of mandamus and certiorari categorizes the grounds as follows:

- H** (i) The decision that the said head lease dated 28 May 1973 is null and void was wrong in law. The second respondent [ie the tribunal] erred in law in holding that the provisions 'persons not being Malay subjects' under s 6(i) of the Enactment meant only natural persons to the exclusion of incorporated companies.
- I** (ii) The second respondent misconducted itself by holding that the sub-leases created thereafter are null and void as such a decision is also wrong in law. The second respondent misconducted itself in holding that the sub-leases contravene s 6(iii) of the Enactment as this was not an issue raised by the first respondent in its claim.

Learned counsel for the appellant contended that only when the tribunal acts outside its jurisdiction resulting in an error of law which renders the tribunal lacking in jurisdiction, or acting outside its jurisdiction or makes a decision which results in a nullity, for example when it breaches the rules of natural justice, can the High Court interfere. If there is no error of law that goes to jurisdiction, he added, then the High Court has no jurisdiction. He had further submitted that we have passed many stages of development of the law as regards ouster clauses and the extent to which the judiciary can interfere when the legislature has made express provisions.

In the celebrated case of *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Ors* [1980] 2 MLJ 165, the facts were that the then s 29(3)(a) of the Industrial Relations Act 1967 ('the Act') provides that subject to the Act, an award of the Industrial Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question in any court of law. A dispute arose between the appellant company and the respondents, a trade union and certain of its members employed by the company. The dispute was referred under the Act to the Industrial Court which made an award in favour of the respondents. The company applied to the High Court for an order of certiorari to quash the award on the ground that it contained errors of law on its face. The High Court granted the order. On appeal by the respondents, the Federal Court held that there was no error of law and restored the Industrial Court's award. The company appealed to the Judicial Committee of the Privy Council.

On the question whether the jurisdiction of the High Court to quash an award of the Industrial Court was excluded by s 29(3)(a) of the Act, it was held by the Judicial Committee in dismissing the appeal that the words of that section in the Act providing that an Industrial Court award should not be 'quashed' or 'called in question in any court of law' were wide enough to oust the jurisdiction of the High Court to review the decision by certiorari although para (a) would not exclude the jurisdiction of the High Court if the Industrial Court had exceeded its jurisdiction; that accordingly there was no power to grant certiorari for an error of law on the face of the award which did not affect the jurisdiction of the Industrial Court and therefore since the only allegation was that there were errors of law on the face of the award, the High Court had no jurisdiction to grant an order of certiorari.

Learned counsel's first proposition on the first issue was that *Fire Bricks* case went from the Federal Court to the Privy Council and it is therefore binding on our courts. At the most, he added, only and only maybe the Federal Court, being the highest court in the land, can disapprove of the decision and change the ruling, but not the Court of Appeal as it did in *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317. In effect, he reiterated, we ought to reject the decision in *Sykt Kenderaan's* case.

That case was an appeal against the decision of the learned High Court judge, quashing by way of certiorari an award of the Industrial Court, and ordering by mandamus that the said court reconsider the

- A matter in question according to law. The appeal primarily turned on two issues, namely, the effect of ouster clauses in Acts of Parliament, and secondly, the proper construction to be given to sub-s (1) and (2) of s 33 of the Act. The facts were that by an award given on 2 June 1988 (the first award), the Industrial Court ruled that the appellant had dismissed its workmen, who were members of the respondent, without just cause and excuse, and ordered that the appellant reinstate them and pay their 'backwages'. By arts 18 and 20 of the collective agreement concluded between the parties, however, it was stipulated that apart from the normal wage, the workmen were also entitled to a special relief allowance as well as a yearly bonus. In consequence, pursuant to the said award, the workmen claimed the extra emoluments contending that the same were covered by the expression 'backwages'. The appellant thought otherwise and refused to pay the said benefits. The respondent applied to the Industrial Court under s 33(1) of the Act for an interpretation of the first award and the two articles aforesaid. By an award dated 6 January 1994 (the second award), the Industrial Court took the view that there was no ambiguity in the expression 'backwages', or the award, and therefore refused interpretation. The respondent took out a motion in the High Court and applied, successfully, for leave to issue the said certiorari and mandamus. The appellant appealed. Before the Court of Appeal, the appellant raised, *inter alia*, the following issues:
- E (a) that on the facts it was improper of the respondent to have resorted to s 33(1) of the Act;
- (b) that, in any case, in the face of the privative clause in s 33B(1) of the Act, it was not open for the High Court to review the Industrial Court's award in question; and
- F (c) that the first award, being unambiguous, required no interpretation, and therefore the Industrial Court committed no error of law in the second award in refusing to interpret it.

- G Learned counsel's second proposition on the first issue in this present case was that the decision in *Sykt Kenderaan's* case should be confined to the ouster clause in s 33B of the Act and not the Enactment as here we are concerned with State legislation which in this instance has been enacted to jealously guard the State lands and that is why s 7 of the Enactment had been so strongly worded.

- H Exclusive jurisdiction had been given to the tribunal, he repeated, and only if the tribunal exceeds its jurisdiction or if its decision is a nullity can the High Court interfere. The tribunal had been entrusted and empowered to hear according to statute and there are two lines of authorities in this situation. One is that it can be quashed if there is no ouster clause and the other if the tribunal exceeds its jurisdiction or if its decision results in a nullity even if there is an ouster clause.

I When asked to reply, learned counsel for the respondent had complained that the jurisdiction point was not taken up at the High Court level and in any case, if we were to follow *Sykt Kenderaan's* case reasoning, there was nothing to that point.

He distinguished the wording of the then s 29(3)(a) of the Act which states: A

Subject to this Act, an award of the [Industrial] Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question in any court of law.

and argued that s 7 of the Enactment was differently worded. He had consequently referred to various extracts of the judgment in *Sykt Kenderaan's* case which need not be restated here. B

Despite the fact that the issue of jurisdiction was not raised in the High Court, it does not prohibit the appellant from raising it at the appeal stage in view of r 18(2) of the Rules of the Court of Appeal 1994. All the relevant authorities on the point of both the superior courts in England and in this country were considered and analysed in *Sykt Kenderaan's* case in great detail and I can only conclude that the position has been correctly stated. C

In any case, we are bound by our own decision. This has been made quite clear by the Federal Court in *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789 where Gopal Sri Ram JCA had enunciated as follows (at p 804B-F): D

Counsel for the appellant, however, invited us to depart from the majority views expressed in *Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 and to uphold the minority judgment of Wan Yahya FCJ. We must emphatically reject this invitation for two reasons. E

First, although *Rama Chandran* was decided by a majority, it is nevertheless a decision of this court. Contrary to any view that may be held in any quarter, this court is bound by its own decisions, whether arrived at unanimously or by a majority. And the correctness of the decisions of this court may not be called into question save and except before a larger Bench of this court specially convened by or upon the direction of the Chief Justice. It is therefore not open for one division of this court to reverse the decision of another division given in an earlier case. If a contrary situation be permitted, then, no decision of the apex court will be safe as precedent and uncertainty in the law will prevail. For like reason, the Court of Appeal is bound by its own decisions. See *Hendry v De Cruz* [1949] MLJ Supp 25. F G

In dealing with an argument such as that presented before us, it is useful to remind ourselves of the basic philosophy of our common law. That philosophy is housed in the expression 'certainty through precedent'. Its main object is to enable members of the public to organise their affairs in accordance with law and for legal advisers to advise their clients with fair accuracy about the state of law in order to avoid wasteful and unnecessary litigation. A rule by which one division of this court is not to be bound by the decisions of another division will therefore undermine the very foundations upon which our common law rests and cannot therefore be countenanced. H

The question of jurisdiction, therefore, falls. I

As for the second issue, learned counsel for the appellant had referred to s 2 of the Enactment, which he says, indicates that the person must be a natural person.

A Section 2 of the Enactment states:

For the purposes of this Enactment —

(a) 'Malay' means a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Moslem religion;

B (b) every Malay born within the State shall be deemed to be a subject of the Ruler of the State.

For this purpose, it is also relevant to cite s 6 of the Enactment:

6 (i) The Sultanate lands or portions thereof may from time to time be leased —

C (a) by writing under the hand of the Ruler of the State to Malay subjects of the said Ruler, or

(b) by writing under the hand of the Ruler of the State and of the Menteri Besar to persons not being Malay subjects of the said Ruler,

D for any term not exceeding 99 years.

(ii) ... ;

(iii) No right or interest in any lease of the Sultanate lands or any portion thereof shall, except in accordance with a written permission in that behalf signed by the Ruler of the State and by the Menteri Besar, be sold or transferred to, or charged in favour of, any person not being a Malay subject of the Ruler of the State. Every attempt to sell or transfer or charge in contravention of the provisions of this subsection shall be null and void and of no effect. Any permission granted under this subsection may be subject to such condition and limitation (if any) as the Ruler of the State may, with the advice of the Menteri Besar, impose.

E

F (iv) Notwithstanding anything contained in the Powers of Attorney Enactment, no power of attorney whereof the donee or any donee is a person not being a Malay subject of the Ruler of the State shall in so far as it relates to any right or interest of a Malay subject of the Ruler of the State in any lease of the Sultanate lands or any portion thereof be irrevocable.

G Reading s 6 as a whole, he maintained, 'subject' can never mean a body corporate but a natural person. Similarly with the wording in s 5 which reads:

H No person not being a Malay subject of the Ruler of the State shall occupy any portion of the Sultanate lands unless he hold a lease or other written authority in that behalf signed by the Ruler of the State and by the Menteri Besar.

I Learned counsel continued by saying that Pt II of the Interpretation Acts 1948 and 1967 applied and although the definition of 'person' in that Part at s 66 states that 'person' and 'party' included any body of persons, corporate or unincorporate, the opening paragraph of that section states 'unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided'. He added that as early as 1919 a body corporate was never contemplated to be

included in the definition of 'person', citing *Re Dodwell & Co Ltd's Trust Deed* [1978] 3 All ER 738 as a case on point where Walton J, having considered the use of the terms 'grantor', 'settlor', 'devisor' and 'testator' in the relevant law, held that it must refer to an individual person and not a body corporate.

But in a manner of springing a surprise, learned counsel for the respondent had referred to the General Clauses Enactment 1896 which would apply to the Enactment where 'person' is defined as 'shall include any company or association or body of individuals whether incorporated or not', and in view of the scarcity of natural persons in 1919, he submitted that the learned trial judge was correct in his finding.

The learned trial judge in dealing with the issue had stated as follows:

As stated in Pt II of the Interpretation Acts 1948 and 1967, the words and phrases as defined in the Acts shall have the meanings assigned to them unless there is something in the subject or context inconsistent with such construction or unless it is otherwise defined by a given statute. Therefore, the question one should ask in this case is whether there is anything repugnant or inconsistent within the context of the Enactment which militates against the adoption of the meaning as provided in Pt II of the Interpretation Acts 1948 and 1967. With respect, I find none. On the contrary, in the context of s 6 of the Enactment, I am of the view that the expression 'persons' should be given the broader meaning as defined in the Interpretation Acts 1948 and 1967. For it is fallacious to say that the word 'subject' appearing in ss 4, 5 and 6 has the effect of narrowing the meaning of the expression 'persons' as found in s 6(1)(b) of the Enactment. This becomes apparent if one were to ask the question: 'Is a body of persons, corporate or unincorporate, a person not being a Malay subject of the Ruler of Pahang?' I am sure the answer to that is in the affirmative. That being so, how could one then say that the expression 'persons' in the said s 6(i)(b) of the Enactment does not include a body corporate.

As for the argument of the respondents that, it is the intention of the legislature to restrict the leasing of Sultanate lands to natural persons so that only natural persons could derive benefit from leases of such land, my short answer to that is: if it so intended, the legislature could have expressly provided to that effect in clear words. On the contrary, the legislature had chosen to use the general expression 'persons' in the Enactment without assigning any special meaning to it, therefore, in the circumstances, the meaning assigned to it in Pt II of the Interpretation Acts 1948 and 1967 should apply.

From the ground of decision of the second respondent, I am satisfied that the second respondent could not have come to that decision had it rightly interpret the relevant statutory provisions. Misinterpretation of a statute or any other legal document or a rule of common law clearly constitutes an error of law (see 1 *Halsbury's Laws* (4th Ed) at para 63). And where upon the face of the proceedings themselves, it appears that the determination or decision of an inferior tribunal is wrong in law, certiorari to quash it will be granted.

The question the learned trial judge posed in the first paragraph of the extract of his judgment as regards s 6(i)(b) of the Enactment appears to apply only to persons not being Malay subjects and he has clearly confined

- A himself to s 6(i)(b) of the Enactment and totally ignored the provisions of s 6(i)(a) of the same Enactment. In so doing, he has fallen into the usual error of interpreting part of a statute without reference to another part of it where the same interpretation cannot fit in. It is made worse here as different interpretation are given to the same word 'subjects' in separate paragraphs, and there are only these two paragraphs, of the same section.
- B As to his argument that the Enactment should have clarified that it was to apply only to natural persons and not drafted the way it was goes against the grain of the principles of statutory interpretation and the provisos to all the definition sections in all existing legislation. That, of course, is not the point as otherwise we would not have to deal with the issue in the first place.
- C

My learned brother Mokhtar Sidin JCA in the majority judgment appears to be on the same wavelength as the learned trial judge as he has said (see p 722C-E):

- D I have scrutinized s 6 and in my view the natural meaning of s 6(i) of the Enactment envisages that the Ruler could lease or sell the Sultanate lands to two categories of people. The first under s 6(i)(a) whereby the Ruler by his writing without the consent of the Menteri Besar can lease or sell any of the lands to the Malay subjects of his. Under s 6(i)(b), the Ruler of the State by writing could lease his land to any other person (including a corporation) not being a Malay subject of his but it must be with the consent of the Menteri Besar. To read it otherwise would not give the required effect to that section.
- E

- To my mind, this would result in the word 'subjects' applying to a natural person if the lease is to a Malay but both a natural person and a body corporate if the lease is to a non-Malay. Does it mean 'subjects' in s 6(i)(a) of the Enactment connote a natural person but 'persons not being Malay subjects' in s 6(i)(b) of the Enactment mean a natural person as well as a body corporate? Should there be different meanings of the word 'subjects' for a Malay and a non-Malay and in the same section? What about a 'Malay' corporation? And is there such a thing as a 'Malay' and 'non-Malay' body corporate probably depending on the racial and religious composition of its directors? I would say there probably could, depending on the declaration in the particular law that incorporates that particular body. What if there is a mixture of both? Again, that reasoning is confining oneself to s 6 of the Enactment alone whereas it is my opinion that in interpreting any statute, one has to read the Enactment as a whole and not any particular section by itself. Section 5 of the Enactment begins with 'No person not being a Malay subject ...'. As I have stated earlier, 'Malay subject' reading the Enactment as a whole and in its proper context must mean a natural person and the words 'no person' must also refer to a Malay subject in view of s 2 of the Enactment.
- F
- G
- H

- I Once again, we have to look at s 2 of the Enactment. Section 2(a) of the Enactment is of particular interest. A 'Malay' is a person belonging not to the Malay race but 'to any Malayan race' provided he habitually speaks the Malay language or any Malayan language and professes the Muslim religion. Can a body corporate belong to any Malayan race? It probably

could 'speak' the Malay language or any Malayan language through its resolutions but can it profess the Muslim religion? A

Section 2(b) of the Enactment goes one step further. To be a subject, one has to be a Malay, as defined in s 2(a) of the Enactment and one has to be 'born'. Of course, it can be argued that a body corporate can be born on being incorporated but that would be stretching things a bit far and as the learned trial judge had commented, the draftsman should have made things clearer by probably using the words 'incorporated' as well in this instance. B

The Malay subject of the Ruler must therefore be a natural person. Going then to ss 5 and 6(i)(b) of the Enactment where the respective categories of 'no person not being a Malay subject' and 'persons not being Malay subjects' appear, can we certainly and convincingly conclude that it must refer to bodies corporate as well? I find that this is not the correct approach to construe a statute. I was more inclined, therefore, to hold that in view of the provisions in the Enactment read as a whole, a 'person' and 'subject' there must mean a natural person. C

All the definition sections in the interpretation laws, irrespective when they were enacted, start off with a proviso clause and the definition certainly cannot apply when the statute being interpreted read in its proper context indicate otherwise as in this case. Hence, even s 2 of the General Clauses Enactment 1896 begins with: 'In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context'. D

To say that 'person' in the Enactment includes a body corporate would certainly be repugnant or contrary to what the statute intended and I would, therefore, with respect hold that the word 'person' and 'subject' in the Enactment can and must only mean a natural person. E

Before I conclude, I must emphasize that on the facts of this case, there is actually no ambiguity at all. Pages 9–12 of the *Principles of Statutory Interpretation* by Guru Prasanna Singh (5th Ed, 1992) state: F

But words used by the legislature do not always bear a plain meaning. Moreover, judges quite often differ on the issue whether certain words are plain and even when there is an agreement that the words are plain, difference of opinion may result on the question as to what the plain meaning is. In case of doubt, therefore, it is always safe to have an eye on the object and purpose of the statute, or reason and spirit behind it. G

'I say that we must look to what the purpose is', was said by Lord Cairns [*Arthur Hill v East and West India Dock Co* (1884) 9 AC 448 (HL)], and it was observed by Sir John Nicholl that 'the key to the opening of every law is the reason and the spirit of the law' [*Brett v Brett* (1826) 3 Add 210; 162 FR 456]. This aspect of 'purpose' is the very foundation of the rule in *Heydon's* case reported by Lord Coke as far back as 1584. Statutes 'should be construed not as theorems of Euclid', said Judge Learned Hand, 'but with some imagination of the purposes which lie behind them' [*Lehigh Valley Coal Co v Yensavage* 218 Fed 547]. 'Each word, phrase or sentence', observed Mukherjea, J 'is to be construed in the light of general purpose of the Act itself' [*Poppalal Shah v State of Madras* AIR 1953 SC 274]. In the H I

- A words of K Iyer J, the interpretative effort 'must be illumined by the goal though guided by the word' [*Smt Kanta Goel v BD Pathak* AIR 1977 SC 1599]. For ascertaining the purpose of a statute, one is not restricted to the internal aid furnished by the statute itself [*Henrietta Muir Edwards v AG of Canada* AIR 1930 PC 120], although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of 'intention'.
- B Without intending to lay down a precise and exhaustive list of external aids, Lord Somervell had stated: 'The mischief against which the statute is directed and, perhaps though to an undefined extent, the surrounding circumstances can be considered. Other statutes in *pari materia* and the state of the law at the time are admissible' [*A-G v HRH Prince Ernest Augustus* [1957] 1 All ER 49 (HL)]. These external aids are also brought in by widening the concept of 'context' 'as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia*, and the mischief which the statute was intended to remedy' [*London Borough of Ealing v Race Relation Board* [1972] 1 All ER 105 (HL)]. In the words of Chinappa Reddy J:

- D 'Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted' [*Reserve Bank of India v Pearless General Finance and Investment Co* [1978] 1 SCC 424].

- E The principle as stated by Holmes J is to the following effect:

- F 'You construe a particular clause or expression by construing the whole instrument and any dominant purposes that it may express. In fact, intention is a residuary clause intended to gather up whatever other aids there may be to interpretation beside the particular words and the dictionary' [*Cases and other Materials on Legislation* by Reid Macdonald and Fordham (2nd Ed) at p 1005].

- G According to Blackstone, the most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs, which are 'either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law' [*Blackstone's Commentaries on the Laws of England* (Vol 1) at p 59].

Then, at pp 20-22, the author has this to say:

- H Statute must be read as a whole in its context
- I When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief that it was intended to remedy [*AG v HRH Prince Ernest Augustus* [1957] 1 All ER 49 (HL)].
- It is a rule now firmly established [*Phillips India Ltd v Labour Court* [1985] 3 SCC 103] that the intention of the legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds [*A-G v HRH Prince Ernest Augustus* [1957] 1 All ER 49 (HL)]; a 'compelling rule' by Lord Somervell of Harrow; and a 'settled

rule' by BK Mukherjee J [*Poppattal Shah v State of Madras* AIR 1953 SC 274]. 'I agree', said Lord Halsbury, 'that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it' [*Charles Robert Leader v George F Diffey* (1888) 13 App Cas 294]. And said Lord Davey:

'Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter' [*Canada Sugar Refining Co v R* [1898] AC 735].

It is spoken of construction '*ex visceribus actus*' [*Newspapers Ltd v Industrial Tribunal*, UP AIR 1957 SC 532; *Superintendent and Remembrance, West Bengal v Abani Maity* AIR 1979 SC 1029, [1979] 4 SCC 85]. 'It is the most natural and genuine exposition of a statute', laid down Lord Coke 'to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers' [*Punjab Beverages Pvt Ltd v Suresh Chand* AIR 1978 SC 995; *Phillips India Ltd v Labour Court* [1985] 3 SCC 103, AIR 1985 SC 1034]. To ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself [*Queen v Eduljee Byramjee*, (1846) 3 MIA 468 (PC)], and, 'the method of construing statutes that I prefer', said Lord Greene MR 'is to read the statute as a whole and ask oneself the question: "In this state, in this context, relating to this subject-matter, what is the true meaning of that word?"' [*Re Bidie (deceased)*] [1948] 2 All ER 995 (CA)]. As stated by Sinha CJ:

'The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs' [*State of WB v Union of India* AIR 1963 SC 1241].

The rule is of general application as even plainest terms may be controlled by the context [*Bentley v Rotherham* (1876) 4 Ch D 588], and 'it is conceivable,' as Lord Watson said, 'that the legislature whilst enacting one clause in plain terms, might introduce into the same statute other enactments which to some extent qualify or neutralize its effect' [*Administrator General of Bengal v Premal Mullick* (1895) ILR 22 Cal 788; 22 IA 107]. The same word may mean one thing in one context and another in a different context [*DN Banerji v PR Mukherjee* AIR 1953 SC 58]. For this reason, the same word used in different sections [*Forbes v A-G of Manitoba* [1937] 1 All ER 249 (PC)] of a statute or even when used at different places in the same clause or section [*Ramnarayan Mor v State of Maharashtra* AIR 1964 SC 949] of a statute may bear different meanings. The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole. How far and to what extent each component part of the statute influences the meaning of the other part would be different in each given case. But the effect of the application of the rule to a particular case, should not be confounded with the legitimacy of applying it.

Again, at pp 78-79, the text says:

A As stated earlier, and as approved by the Supreme Court:

‘The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonies with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained’ [*Workmen of Dimakucht Tea Estate v Management of Dimakuchi Tea Estate* AIR 1958 SC 353].

B

In the words of Shah J:

C

‘It is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonies with the object of the statute, and which effectuate the object of the legislature’ [*New India Sugar Mills Ltd v Commissioner of Sales Tax, Bihar* AIR 1963 SC 1207].

D

Therefore, when two interpretations are feasible, the court will prefer that which advances the remedy and suppresses the mischief as the legislature envisioned [*Carew & Co v Union of India* AIR 1975 SC 2260]. The court should adopt a project oriented approach, keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits [*Busching Schmitz Private Ltd v PT Menghani* AIR 1977 SC 1569].

E

In view of the reasons stated earlier, I would allow the appeal with costs here and below, set aside the order of the learned High Court judge and refund the deposit to the appellant.

7 April 1997

F

Mokhtar Sidin JCA: We have given our decision earlier in respect of this appeal whereby we have dismissed the appellant’s appeal with costs. Now I give my reasons for doing so.

In this case, the appellant appealed against the decision of the learned judge of the High Court at Kuantan who had allowed an application by the respondent for an order of certiorari to quash the decision of the Tribunal

G

Khas yang Ditubuhkan di bawah s 7 Enakmen Tanah Kesultanan 1919 (‘the tribunal’) with regard to a claim made by the appellant in relation to a piece of land held under CT No 5941, Lot No 4821, Mukim of Kuala Kuantan (‘the said land’).

H

On 28 May 1973, the late Sultan of Pahang, DYMM Sultan Abu Bakar ibni Almarhum Sultan Abdullah, leased out to the respondent the said land for a term of 50 years with effect from 1 July 1964. The lease was made under the Sultanate Land Enactment 1919 (Pahang) (‘the Enactment’). Subsequently, the initial lease was then substituted with a new supervening lease of 99 years with effect from the same date,

I

ie 1 July 1964. I believe this substitution was done because of the amendment to the Enactment which allows the lease to be extended to 99 years from 50 years as originally stated in the Enactment. It is not disputed that proper authorization was done by the late Sultan and the then Menteri Besar as required by the Enactment.

On 14 May 1985, the appellant instituted a claim before the tribunal claiming *inter alia*, that: A

- (i) by virtue of ss 4 and 6 of the Enactment, the lease of the said land to the respondent was invalid on the ground that the respondent is not a natural person nor a subject of the Ruler of the State; and
- (ii) further or in the alternative, the respondent has been in breach of cl 2(c) of the lease and the provision of ss 4 and 6 of the Enactment in that the respondent had purported to create a trust and sub-leases over the said land without the corresponding written consent of the Menteri Besar. B

After hearing counsel for the appellant and the respondent, the tribunal in its decision dated 17 December 1991 held that: C

- (i) the lease of the land by the late Sultan is null and void for the following reasons —

The word 'subjects' appearing in s 6(i)(b) (as well as sub-s (i)(a)), to my mind, restrict the meaning of the word 'persons' to mean only natural persons who are not Malay subjects of the Ruler and thus, as the lessee, Sathask Realty Sdn Bhd, is a company, it cannot be holding a lease over any Sultanate land as it is not a natural person, and thus the granting of the head lease to Sathask Realty Sdn Bhd is *ultra vires* ... ; D

- (ii) as the head lease is void *ab initio*, the sub-leases created thereunder are accordingly void;
- (iii) the creation of the sub-leases also contravenes s 6(iii) of the Enactment as there is no evidence [that] the written permission of the Menteri Besar had been obtained prior to the creation of the sub-leases. E

The respondent being dissatisfied with the decision of the tribunal moved the High Court, Kuantan for an order of certiorari to quash the decision of the tribunal on the grounds appearing in the statement filed pursuant to O 57 of the Rules of the High Court 1980. Briefly, the respondent contended that the tribunal was wrong in law in holding that the word 'persons' found in s 6(i)(b) of the Enactment meant only natural persons to the exclusion of a body corporate like the respondent. Secondly, the respondent contended that the tribunal had misconducted itself in holding that the sub-lease contravenes s 6(iii) of the Enactment when this was not an issue raised by the appellant in its claim. G

The learned judge granted the application by the respondent for an order of certiorari and quashed the decision of the tribunal. The reason given by him is that the tribunal had committed an error of law which is apparent on the face of the record. From the judgment, it appears to me that the learned judge's finding is based solely on the interpretation of the word 'person' in the Enactment. H

I believe the learned judge was right when he found that an error of law which is apparent on the face of the record is sufficient to grant the order as prayed by the respondent. I believe that both parties did not dispute this since no argument in this respect was tendered before us. As I

- A such, there is no necessity for me to state the law as to how and when the order of certiorari could be made available.

From the record, it appears that there is only one issue before us, since the appellant had abandoned the issue of sub-lease before the learned judge, which is for this court to consider whether the appellant is correct in his contention that s 6(i)(b) of the Enactment does not include a corporation such as the respondent. Section 6(i) reads as follows:

- B The Sultanate lands or portions thereof may from time to time be leased —
- (a) by writing under the hand of the Ruler of the State to Malay subjects of the said Ruler, or
- C (b) by writing under the hand of the Ruler of the State and of the Menterī Besar to persons not being Malay subjects of the said Ruler,
- for any term not exceeding 99 years.

- D It was submitted by the appellant that the expressions 'Malay subjects' and 'persons' in the above section apply only to natural persons and not to a company. The only question before us is the interpretation and the application of the word 'person' in s 6 of the Enactment. It was contended by the appellant in the court below and before us that the normal meaning of a person which includes a body corporate is not applicable to the word 'person' in s 6 of the Enactment. The statutory meaning of the word
- E person is defined in s 2 of the Interpretation and General Clauses Ordinance 1948 ('the Ordinance'). Section 2(61) provides as follows:

'person' and 'party' includes any body of persons, corporate or unincorporate; ...

- F The appellant contended that the Ordinance is not applicable to the Enactment on two grounds. Firstly, the Enactment was enacted much earlier than the Ordinance and thus the interpretation of the word 'person' in the Ordinance would not be applicable to the Enactment, and, secondly, the general reading of s 6(i) would not permit the reading of the word 'person' to include a corporation.

- G As to the first, it was contended by the appellant that the Enactment was enacted in 1919 when there was no limited company or corporation in existence in the State of Pahang. The Ordinance being a later creature is not applicable. Thus the Enactment did not envisage a limited company for its purpose. The simple answer to this as submitted by counsel for the
- H respondent is that at that time there was already in existence the General Clauses Enactment 1896. The General Clauses Enactment is the predecessor of the Ordinance and it was adopted by the State of Pahang (being one of the four Federated Malay States then) in 1897. Section 2(xviii) of the General Clauses Enactment provides as follows:

- I (xviii) 'Person' shall include any company or association or body of individuals whether incorporated or not.

The meaning of the word 'person' in the General Clauses Enactment 1896, though not identical to the word 'person' in the Ordinance, is more or less the same. Thus when the Enactment was enacted, the legislature

was aware of the General Clauses Enactment 1896 and would definitely have known what is meant by the word 'person'. It means the same as it is now. Thus the first limb of the argument forwarded by the appellant failed. A

Secondly, counsel for the appellant had gone at great length to convince us that the word 'person' or 'persons' contained in s 6 of the Enactment conveyed a totally different meaning from that of the Ordinance. He had cited English laws and authorities in respect of this. I am of the view that they are not applicable to the present case. As I understand the appellant's arguments, the word 'person' or 'persons' in s 6 of the Enactment conveyed a special meaning which is limited to natural persons and not otherwise. The appellant contended that s 6 should be read as a whole together with the words 'Malay subjects of the said Ruler'. When this is done, the word 'person' in s 6(i)(b) can only mean a natural person and thus not applicable to the respondent being a body corporate. I have scrutinized s 6 and in my view the natural meaning of s 6(i) of the Enactment envisages that the Ruler could lease or sell the Sultanate lands to two categories of people; the first under s 6(i)(a) whereby the Ruler by his writing, without the consent of the Menteri Besar, could lease or sell any of the lands to the Malay subjects of his. Under s 6(i)(b), the Ruler of the State by writing could lease his land to any other person (including a corporation) not being a Malay subject of his but it must be with the consent of the Menteri Besar. To read it otherwise would not give the required effect to that section. Thus the late Sultan had done exactly what s 6(i)(b) required him to do in that he leased the said land to the respondent (a corporation) by writing under his hand as Ruler of the State and that of the Menteri Besar who gave his consent by signing the lease instrument. As such I find that there is no merit in the second argument put up by the appellant. B
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From the record and as submitted by the respondent's counsel, the appellant had abandoned the second ground before the learned judge. Though that was so, the learned judge in his judgment had made reference to it. As such I am of the opinion that I should say something on the sub-leases. G

The appellant had contended that the sub-leases are null and void because they were done contrary to cl 2(c) of the Express Provisions of the lease. Clause 2(c) provides as follows:

(2) The lessor hereby covenants with the lessee as follows: H

...

(c) To consent to and permit the lessee to assign, sub-lease or part with the possession of the demised land thereof to any respectable and responsible company, person or persons for the residue of the term hereby granted provided always that the written consent of the Menteri Besar of the State is first had and obtained. Such permission shall not be unreasonably withheld. I

- A The question arising from this is whether the sub-leases had contravened the Express Provisions of the lease whereby the written consent of the Menteri Besar had not been obtained for those sub-leases.

- B As can be seen from the record, the list of the sub-leases was also attached. I am not sure whether it is attached to the lease instrument or not. Altogether there were 17 sub-leases of which 15 were sub-leased before the lease instrument was executed. Looking at those sub-leases, I found that those 15 sub-leases were done after the lease was granted to the respondent but before the deed instrument was executed. It must be noted that the deed instrument was executed by the late Sultan of Pahang and the then Menteri Besar. The execution by the then Menteri Besar signified that the Menteri Besar had consented to the lease when it is clearly stated before the signature of the Menteri Besar as follows:

Signed by

—Menteri Besar of the State of Pahang in token of his assent to this lease—

- D With that, I am of the opinion that even if the list of the sub-leases was not an appendix to the lease instrument, the Menteri Besar knew about the sub-leases when he signed the lease instrument. With that knowledge, it is in my opinion he had consented to the sub-leases when he signed the lease instrument.

- E As I have stated earlier, any error of law on the face of the record is sufficient to attract the order of certiorari. Since it has been established that there is at least one error committed by the tribunal, the learned judge was right in granting the order of certiorari. As such, I would dismiss the appeal with costs.

- F *Appeal dismissed.*

Reported by Rudeen Chua

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